

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUGUST IMAGE, LLC,

Plaintiff,

v.

GIRARD ENTERTAINMENT & MEDIA LLC,
and KEITH GIRARD,

Defendants.

CASE NO. 1:21-cv-09397-ER

DECLARATION OF ELEANOR M. LACKMAN

ELEANOR M. LACKMAN declares as follows:

1. I am a member of the Bar of this Court and a partner in the law firm of Mitchell Silberberg & Knupp LLP, attorneys for Defendants Girard Entertainment & Media LLC and Keith Girard (collectively, "Girard") in this proceeding. I submit this declaration in support of Girard's Opposition to Plaintiff August Image, LLC's ("Plaintiff") Motion for Leave to File a Third Amended Complaint.

2. Attached hereto as **Exhibit A** are true and correct copies of the copyright registrations for the images at issue. My office collected the attached registrations from the U.S. Copyright Office website based on their reference in Plaintiff's proposed Third Amended Complaint. As federal records, the Court may take judicial notice of them and Girard submits them for that purpose.

3. Attached hereto as **Exhibit B** is a true and correct copy of a blog post, summarizing a similar case in a Canadian federal court, which suggests that Pugliese entered its

client agreement with August Image in 2012.

4. On February 2, 2023, Plaintiff's counsel sought Defendants consent to a stipulation permitting Plaintiff to file a Third Amended Complaint. Plaintiff later provided a draft of the TAC and its associated exhibits. A true and correct copy of the TAC and exhibits provided to Defendants by Plaintiff on February 2, 2023 are attached hereto as **Exhibits C, D and E**.

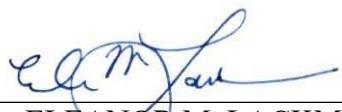
5. Plaintiff's proposed TAC, as sent to Defendants on February 2, 2023, included an allegedly infringed image which does not appear in the proposed TAC before the court. *See Exhibit C at 8 and Exhibit D at 5.* Without notice to Defendants, Plaintiff filed suit over this image in a separate case, *August Image, LLC, et al. v. Girard Entertainment & Media LLC, et al.*, No. 1:23-cv-1492-VEC (S.D.N.Y. Feb. 22, 2023).

6. At my instruction, my office conducted a search for all cases in which Creative Photographers, Inc. and August Image, LLC served as co-plaintiffs. A true and correct list of those cases is attached hereto as **Exhibit F**.

7. Defendants have raised the issue of Plaintiff's standing and requested copies of Plaintiff's relevant client agreements (the "Agreements") numerous times in filings before the Court. ECF No. 21, 25, 33, 37, 44, 49. On May 9, 2022 I raised the issue of standing with Plaintiff's counsel at the time, Scott Burroughs. On August 25, 2022, after Plaintiff's current counsel replaced Burroughs on this case, I requested the Agreements to assess, *inter alia*, the strength of Plaintiff's claims. During meet and confers preceding Defendants' many filings involving Plaintiff's lack of standing, I have requested the Agreements. Plaintiff has not produced the Agreements as requested.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 31, 2023



ELEANOR M. LACKMAN